

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CSX TRANSPORTATION, INC.,)
individually and on behalf of NORFOLK)
& PORTSMOUTH BELT LINE)
RAILROAD COMPANY,)
)
)
Plaintiff,)
)
v.) Case No. 2:18-cv-530
)
)
NORFOLK SOUTHERN RAILWAY)
COMPANY, *et al.*,)
)
)
Defendants.)
)
)
)

**MEMORANDUM IN SUPPORT OF DEFENDANT NORFOLK SOUTHERN
RAILWAY COMPANY'S MOTION TO FILE DOCUMENTS UNDER SEAL**

Defendant Norfolk Southern Railway Company (“NS”), by counsel, states as follows in support of its Motion to File Documents Under Seal. Defendant seeks to file the following documents under seal: Defendant’s unredacted Reply Memorandum in Support of Motion for Summary Judgment, and the following Exhibits to Defendant’s Reply Memorandum in Support of Motion for Summary Judgment: Exhibits 123, 124, and 125. On October 29, 2019, the Court entered a Stipulated Protective Order, which governs the parties’ use of confidential information produced in this case. ECF No. 79.

1. Paragraph 2 of the Stipulated Protective Order defines “Protected Material” as material containing information that “must or may be protected from disclosure,” including material designated “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” ECF No. 79, ¶ 2.

2. Defendant's unredacted Reply Memorandum in Support of Motion for Summary Judgment and Exhibits 123, 124, and 125 refer or cite to documents, or contain testimony, that have or has been designated "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" by Plaintiff CSX Transportation, Inc. ("CSXT") under the Stipulated Protective Order.

3. These documents and the testimony designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" contain highly confidential and sensitive information relating to CSXT's transportation and shipping practices, business strategy, internal communications, and other highly confidential, proprietary, and sensitive business information, release of which would harm CSXT.

4. These documents and the designated deposition testimony are "Protected Material" under the Stipulated Protective Order. ECF No. 79, ¶ 2.

5. The Stipulated Protective Order requires Defendants to file these documents and the designated deposition testimony under seal. ECF No. 79, ¶ 16.

For the foregoing reasons, Defendant requests that the Court enter the proposed order attached to the Motion to Seal as **Exhibit A** authorizing and directing Defendant to file the unredacted Reply Memorandum in Support of Motion for Summary Judgment and : Exhibits 123, 124, and 125 under seal, and directing the Clerk of Court to maintain such exhibits under seal pending further order of the Court.

Defendant also files herewith a Notice of Sealing Motion as required by Local Rule 5(C).
Defendant waives oral argument on this Motion.

Dated: May 13, 2021

Respectfully submitted,

/s/ Michael E. Lacy

Alan D. Wingfield (VSB No. 27489)
Michael E. Lacy (VSB No. 48477)
Massie P. Cooper (VSB No. 82510)
TROUTMAN PEPPER HAMILTON SANDERS LLP
1001 Haxall Point
Richmond, Virginia 23219
Telephone: (804) 697-1200
Facsimile: (804) 698-6061
Email: alan.wingfield@troutman.com
Email: michael.lacy@troutman.com
Email: massie.cooper@troutman.com

John C. Lynch (VSB No. 39267)
Kathleen M. Knudsen (VSB No. 90845)
TROUTMAN PEPPER HAMILTON SANDERS LLP
222 Central Park Avenue, Suite 2000
Virginia Beach, VA 23462
Telephone: (757) 687-7759
Facsimile: (757) 687-7510
Email: john.lynch@troutman.com
Email: kathleen.knudsen@troutman.com

Monica McCarroll (VSB No. 45622)
REDGRAVE LLP
14555 Avion Parkway, Suite 275
Chantilly, Virginia 20151
Telephone: (703) 592-1154
Facsimile: (703) 230-9859
Email: MMcCarroll@redgravellp.com

Tara L. Reinhart
John R. Thornburgh II
Thomas R. Gentry
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
1440 New York Avenue, N.W.
Washington, DC 20005
Telephone: (202) 371-7000
tara.reinhart@skadden.com
john.thornburgh@skadden.com
thomas.gentry@skadden.com

Attorneys for Norfolk Southern Railway Company